

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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CITY OF ROYAL OAK,

Plaintiff-Appellant,

v

MICHAEL LAWRENCE DELEHANT,

Defendant-Appellee.

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UNPUBLISHED

May 9, 2006

No. 260189

Oakland Circuit Court

LC No. 2004-008152-AR

Before: White, P.J., and Fitzgerald and Talbot, JJ.

PER CURIAM.

Plaintiff appeals by leave granted from the circuit court order affirming the district court order that dismissed the charge of OUIL against defendant. We reverse and remand for further proceedings. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

While driving his car around 7:00 a.m. one morning, defendant hit another car and damaged it extensively. The owner of the parked car reported the accident to the police. Defendant drove away without stopping to contact the police or the owner of the car. Defendant drove to his home and parked his damaged car on the street. Someone observed defendant's erratic driving and anonymously called the police, reporting defendant's driving, defendant's appearing to be drunk, damage to the car, and the address where the car was parked. One police officer investigated the hit-and-run accident; another officer investigated defendant's car. After the police officers conferred with each other, the officer investigating defendant's car thought that it was probably involved in the hit-and-run accident.

While the officer was examining defendant's car, defendant, with his father, left their home and approached the officer. In response to the officer's questions, defendant told him that he had just been involved in a hit-and-run accident, panicked, and drove home, and that now he and his father were on their way to return to the accident. The officer then asked defendant if he had been drinking. Defendant said that he had been drinking the night before but had not been drinking that morning. After the officer smelled alcohol on defendant's breath and observed his bleary eyes, he administered field sobriety tests on defendant, conducted a preliminary breath test, and concluded that defendant was too intoxicated to operate a vehicle. The officer arrested defendant and charged him with operating a motor vehicle under the influence of liquor and with an unlawful blood alcohol level.

Defendant moved in district court to suppress his statements under the corpus delicti rule and to dismiss the charges. Defendant argued that, apart from his statements that he had been driving the car and that he had been drinking, there was no independent evidence establishing that a crime had been committed. The district court found that there was no independent evidence to establish that defendant had driven the car while under the influence of liquor, suppressed the statements, and dismissed the charges. Plaintiff appealed to the circuit court. The circuit court affirmed, finding that independent circumstantial evidence established that the car had been operated, but that no independent evidence showed that defendant had operated the car while under the influence of liquor.

Plaintiff appeals by leave granted and claims that defendant's statements did not constitute a confession to which the corpus delicti rule applied and that evidence independent of defendant's alleged confession established that a crime had occurred. We agree.

The corpus delicti rule is designed to prevent the use of a defendant's confession to convict him of a crime that did not occur. *People v McMahan*, 451 Mich 543, 548-549; 548 NW2d 199 (1996). The corpus delicti rule bars a prosecutor from using a defendant's confession in any criminal case unless the prosecutor presents direct or circumstantial evidence independent of the defendant's confession that the specific injury or loss occurred and that some criminal agency was the source or cause of the injury. *McMahan*, *supra* at 548-549; *People v Konrad*, 449 Mich 263, 269-270; 536 NW2d 517 (1995). The corpus delicti must be proved by a preponderance of the evidence and may be proved by either direct or circumstantial evidence. *People v Modelski*, 164 Mich App 337, 341-342; 416 NW2d 708 (1987). "Once the corpus delicti of the crime is established, appropriate extrajudicial confessions of the accused are admissible." *McMahan*, *supra* at 549.

Application of the corpus delicti rule is limited "to admissions which are confessions, and not to admissions of fact which do not amount to confessions of guilt." *People v Rockwell*, 188 Mich App 405, 407; 470 NW2d 673 (1991). Where the defendant makes admissions of fact, which do not amount to confessions of guilt, those admissions may be admitted to prove the corpus delicti of the crime. *People v Porter*, 269 Mich 284, 289-291; 257 NW 705 (1934); *Rockwell*, *supra* at 407. Further, the actions of the defendant before and after the alleged crime may be used to circumstantially establish the criminal agency prong of the corpus delicti rule. *Modelski*, *supra* at 345-346.

Defendant's statements to the officer do not constitute a confession of guilt. Defendant merely admitted that he drove the car that morning, that he was involved in a hit-and-run accident, and that he drank alcohol earlier that night but did not drink alcohol that morning. Driving after drinking alcohol is not illegal unless it impairs a driver's ability to drive or raises a driver's blood alcohol level above the legal limit. Defendant did not admit that his ability to drive was impaired because of drinking alcohol or that his blood alcohol level exceeded the legal limit. Defendant's denial that he drank alcohol that morning underscores that his statement was not a confession but a denial. Therefore, defendant's statements are not confessional, and the corpus delicti rule does not apply to bar the prosecutor from using them.

More important, the circumstantial evidence in this case established the required corpus delicti. As the prosecutor recounted, the record shows the following. Someone driving a black car was involved in a hit-and-run accident and left the scene. The damage to defendant's car is

consistent with being the car involved in the hit-and-run accident. The investigating officer's observation that defendant's eyes were bloodshot and that his breath smelled of alcohol within less than an hour after the hit-and-run accident, circumstantially indicate that defendant's ability to drive the car may have been impaired by the consumption of alcohol. While not conclusive beyond a reasonable doubt, we find that this circumstantial evidence creates a preponderance of evidence that is sufficient to establish the corpus delicti of operating a motor vehicle under the influence of liquor.

Accordingly, we reverse the order of the circuit court, which affirmed the order of the district court dismissing the charge against defendant, and remand for further proceedings.

Reversed and remanded. We do not retain jurisdiction.

/s/ Helene N. White  
/s/ E. Thomas Fitzgerald  
/s/ Michael J. Talbot